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AUG 17 2007

OFFICE OF PETITIONS

In re Patent No. 7,208,389  
Issue Date: April 24, 2007  
Application No. 10/672,311  
Filed: September 26, 2003  
Attorney Docket No. NOVLP075/NVLS-  
000820

DECISION ON PETITIONS  
UNDER 37 CFR 1.78(a)(6)

This is a decision on the renewed petition under 37 CFR §1.78(a)(6), filed April 6, 2007, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for benefit of priority to the provisional application set forth in the concurrently filed amendment. It is noted that the statement in the amendment that the application is related to application No. 10/672,305 is not a claim for the benefit of priority to that application and thus, has not been considered as a delayed claim under 37 CFR § 1.78(a)(3).

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

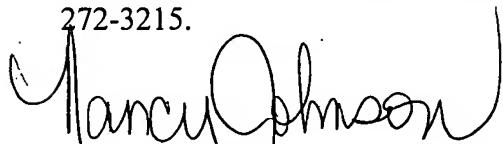
Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 119(e) is accepted as being unintentionally delayed.

The application issued into a patent on April 24, 2007. A review of the record shows a certificate of correction is not necessary as the patent issued with the claim for benefit of priority to provisional application No. 60/469,433.

A determination of whether the applicant is entitled to claim benefit of the prior-filed application is made by the Examiner. This decision is limited to the issue of accepting the unintentionally delayed claim and does not address entitlement to the benefit of priority. As such, this decision is not a determination on whether the patent properly issued with the claim for priority under 35 U.S.C. § 119(e) to provisional application No. 60/469,433.

Any questions concerning this decision on petition may be directed to Charlema Grant at (571) 272-3215.



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